In 2018, the Rome Statute establishing the International Criminal Court (ICC) celebrates its twentieth birthday. The experience of the past two decades contradicts the sceptics who, in 1998, predicted an international convention destined to remain a dead letter. Since the beginning of the ICC's activity (in July 2002) many judicial developments have taken place and, in recent years, substantive decisions and judgements have been handed down at a slow but significant pace. The Court has tried 10 persons, 14 cases are ongoing in 11 currently open situations and the Office of the Prosecutor is working on 10 preliminary examinations. Inactivity no longer seems to be an acceptable criticism today.

Nevertheless, important criticisms remain. The international and interdisciplinary colloquium that will be held in December 2018 intends to focus specifically on these criticisms. The aim of the colloquium is not to revisit 20 years of victories, advances, questions, mistakes, contradictions or failures, but to highlight and question fundamental criticisms directed at the Court.

Today's criticisms of the ICC are manifold, interdisciplinary, heterogeneous and polymorphic. The few general reflections that we make here are based on a threefold division of these criticisms.

Firstly, criticisms can be divided into legal/technical, political/economic or sociological/anthropological. A stricto sensu legal approach must of course be taken into account. However, in our view, other approaches – relating to legal theory, sociological, anthropological, political, linguistic, historical, etc. – also need to be considered. This will enable the colloquium to give a voice to the actors of international criminal justice, whether they are active within the ICC institution, alongside, outside or against it. The need to resort to other approaches allows the participants to assess criticisms different from the strictly technical legal ones.

The second division relates to what may be called the “quality” of the criticisms: in Watzlawick's terms, these can be located in or out of the “fly-bottle”. In the former case, they do not aspire to create an alternative better than the ICC (or, more generally, criminal law) but to improve the ICC itself (or criminal law). Conversely, in the second case, the criticisms do not seek to improve the Court (or criminal law) but to create an alternative better than the Court (or criminal law).

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1 See ICC website.
2 On the different approaches, see O. CORTEN, Méthodologie du droit international, Bruxelles, Editions de l’Université de Bruxelles, 2009.
Finally, the third division focuses on the actors formulating the criticisms. Here we can highlight two categories of actors: on the one hand, those who are active directly within the ICC institution (judges\(^4\), their assistants\(^5\), prosecutors\(^6\), some defence lawyers\(^7\), defendants\(^8\), non-governmental organisations acting for or within the ICC - mainly NGOs defending or representing victims\(^9\) - or victims themselves); on the other hand, those actors who operate outside the ICC institution (mainly states or academics\(^10\)).

It goes without saying that these divisions are not watertight and can overlap: internal criticisms can be expressed by external actors, sociological criticisms can be pronounced by lawyers, and so on. Nevertheless, the proposed divisions can be useful for drawing up a catalogue or a typology of existing criticisms. This is what we propose to do by holding an international colloquium bringing together the different actors and critics in order to better define the contours, reveal the aims and appreciate the relevance of the criticisms directed at the Court.

The colloquium will centre on the first division by devoting half a day to the criticisms of each of the approaches identified, namely technical/legal (A), political/economic (B), and sociological/anthropological (C).

### A. Technical/legal approaches

First of all, criticisms can be of a technical/legal nature. Thus, several of the principles of criminal law have been used to criticize the Court for failing to comply with them: the principle of legality\(^11\), the *ne bis in idem* principle\(^12\), the principle of individualisation of the sentence (or the question relating to the forms of individual responsibility as opposed to the commission of collective crimes\(^13\)), the rapidity of proceedings\(^14\), respect for human rights

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\(^5\) Professionals working at the Court aside from Judges also publish scholarly articles ; see, e.g., G. Bitti, « La Cour pénale internationale a dix ans, quel bilan judiciaire », *Semaïne juridique*, suppl. N°52, 24 décembre 2012, p.7-10


\(^7\) V. COURIELLE-LABROUSSE, « Intervenir en défense devant les juridictions internationales pénales. Un témoignage », présentation faite lors des Deuxièmes journées de la justice internationale pénale, Université Paris II, 2 et 3 février 2017.


\(^9\) For example, Avocats sans frontières or International Federation for Human Rights.


(both for the victims - right to participate in criminal proceedings\textsuperscript{15} - and for the defendants - right of defence\textsuperscript{16}) or the question of the severity of penalties (some advocating, for example, for the application of the death penalty by the ICC\textsuperscript{17}).

B. Political/economic approaches

Criticisms can then be made at the political or economic level. Here, one of the first criticisms levelled at the ICC is its ineffectiveness\textsuperscript{18}. This criticism often highlights the fact that, in 20 years, the Court has handed down only a few substantive judgments and only a few decisions on reparations. At the same time, it is often argued that the Court does not have any police (or coercive force of any kind) and must therefore rely on States – which are not always cooperative, even despite having ratified the Rome Statute – for the enforcement of many decisions, including for the arrest of persons subject to arrest warrants. The cases concerning Simone Gbagbo, Saïf Gaddafi and the President of Sudan Al Bashir are symptomatic: in the first two cases, States refused to hand them over to the ICC; in the last case, States (members or not of the ICC) refused to arrest an incumbent Head of State.

At the same time, the ICC has also been singled out for its slowness: lengthy investigations, certain situations that have been going on for more than 10 years without any cases being opened, trials that have stalled for more than 12 years, and decisions on reparations that are still pending.

Along the same lines, the Court is also criticised for the criminal policy implemented by the Office of the Prosecutor\textsuperscript{19}. This criminal policy has been the subject of much debate since the Court’s creation: too African-oriented (\textit{i.e.} directed against people from the African continent), too directed against states of the South, and above all, mainly against low-level offenders or non-leaders. This criticism is coupled with difficulties in understanding the Prosecutor’s criminal policy, as demonstrated by the Mavi Marmara case. Thus, the ICC is accused of being first and foremost a political body, \textit{i.e.}, a court for powerful states or a court whose activities are guided by opaque political interests. Some scholars also highlight the power struggle within and vis-à-vis the ICC\textsuperscript{20}.

Finally, these political criticisms are coupled with criticisms of an economic nature: the financial cost of the Court. With a budget of approximately $140 million in 2016, the Court is regularly denounced because the cost of each case appears to be excessively high\textsuperscript{21}.


\textsuperscript{17} See the negotiations in Rome.


C. Sociological/anthropological approaches

Regarding sociological or anthropological criticisms, they are mainly linked to the legitimacy of the Court. This legitimacy is evaluated in terms of purposes legitimacy\(^\text{22}\), representativeness\(^\text{23}\), universality of defended values or messages. In this respect, the ICC’s lack of universality is often denounced. How can the ICC claim to be universal when the majority of the world’s population does not fall within its jurisdiction due to the lack of ratification of its Statute by important states (both politically and in terms of population size)?

On the other hand, sociological criticisms denounce the “westernization” of the criminal justice process – with which they contrast the so-called traditional forms of justice such as the Gacaca courts in Rwanda or the Ubushigantante courts in Burundi. Sociological criticisms also address, albeit more rarely, issues of power and domination within the ICC itself\(^\text{24}\).

Finally, the anthropological or sociological approaches which are critical of the ICC (or of international criminal law) regularly emphasize the negative consideration of victims\(^\text{25}\) or defendants\(^\text{26}\), as well as the evaluation of professionals working in the ICC\(^\text{27}\).

Provisional Conference Plan

The Conference - bilingual English/French (without interpretation) - will be held at the ULB on 3-4 December 2018.

Several roundtables (according to the number of participants) will be organized. The objective is to have a multidisciplinary discussion, mixing different positions (internal/external) and mixing practitioners, observers and academics. Also, the discussions will be transcribed (verbatim). The records of the discussions as well as the conclusions of the presidents of the different panels will be published after the colloquium.


Proposals (in French or English) not exceeding 500 words, accompanied by a short bio (in one single document) must be sent no later than 31 May 2018 to Vaios Koutroulis and Damien Scalia, professors at the Université Libre de Bruxelles at the following address: arc-strategic-litigation@ulb.ac.be

The selected participants will be informed by June 15, 2018. Accommodation and catering costs are covered.